

General Information Letter: Nexus is not generally an appropriate issue for determination by letter ruling.

September 17, 2001

Dear:

This is in response to your letter dated August 17, 2001 in which you request information regarding Illinois income tax laws. The nature of your request and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's website at [www.revenue.state.il.us](http://www.revenue.state.il.us).

Your letter states the following:

Thank you for your 7/23/01 response to my June 22, 2001 letter. Please be advised that we do not have nexus. Our employees are not empowered to accept orders for merchandise. All orders are accepted at our corporate headquarters in Florida. As stated in my original letter, an answering service in Chicago triggered nexus requiring the corporate income tax filings. We have since cancelled the answering service. The answering service was cancelled in July 1995.

Since our nexus discontinued in 1995, we were not required to pay tax thereafter. Can I file amended tax returns for the years 1998 and 1999 and get refunds of all tax paid? Must I file a tax return for the years ending 12/31/00 and 12/31/01. [sic] If there is a formal process to eliminate income tax filings, please advise the details of such a process.

## **RULING**

Section 909(a) of the Illinois Income Tax Act ("the IITA" ; 35 ILCS 5/101 *et seq.*) provides in part:

In the case of any overpayment, the Department may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of the tax imposed by this Act, regardless of whether other collection remedies are closed to the Department on the part of the person who made the overpayment and *shall refund any balance to such person.* (Emphasis added)

Under IITA section 904(a), an "overpayment" is the excess of the tax paid for the taxable year over the correct amount of tax for the taxable year.

Under IITA section 909(d), taxpayers must file claims for refund in accordance with Department of Revenue Regulations ("Regulations") section 100.9400. In the case of a corporation, claims for refund must be made by filing Form IL-1120X. (Regulations §100.9400(f))

In general, a claim for refund must be filed not later than 3 years after the date the return was filed or one year after the date the tax was paid, whichever is later. (IITA §911(a))

Section 502(a) of the IITA requires a corporation to file an Illinois income tax return for each taxable year for which it is liable to pay Illinois income tax. In addition, regardless of whether the corporation

is liable for Illinois tax, the section requires that a return must be filed for each taxable year in which the corporation is qualified to do business in Illinois and required to file a federal income tax return.

Applying the above provisions to the facts as set out in your letter, an amended return may be filed to recover any overpayment of Illinois income tax for calendar years 1998 and 1999 consistent with the IITA and Regulations section 100.9400. No determination is made here, however, regarding the merits of your claim. A return must be filed for each taxable year the corporation is qualified to do business in Illinois and required to file a federal income tax return, regardless of whether the corporation is liable for Illinois income tax. The Department does not maintain any process by which to avoid filing requirements imposed under the IITA.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items one through eight of 86 Ill. Adm. Code 1200.110(b). If you have additional questions regarding this GIL, you may contact Legal Services at (217) 782-7055.

Sincerely,

Brian L. Stocker  
Staff Attorney (Income Tax)